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 of Holders of Executory Contract Rights Through  
 USA Commercial Mortgage Company

UNITED STATES BANKRUPTCY COURT  
 FOR THE DISTRICT OF NEVADA

In re:  
 USA COMMERCIAL MORTGAGE COMPANY,  
 Debtor.

Case Nos.:  
 BK-S-06-10725-LBR  
 BK-S-06-10726-LBR  
 BK-S-06-10727-LBR  
 BK-S-06-10728-LBR  
 BK-S-06-10729-LBR

In re:  
 USA CAPITAL REALTY ADVISORS, LLC,  
 Debtor.

In re:  
 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,  
 Debtor.

JOINTLY ADMINISTERED  
 Chapter 11

In re:  
 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
 Debtor.

Date:  
 Time:

In re:  
 USA SECURITIES, LLC,  
 Debtor.

Affects:  
☒ All Debtors  
☐ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

**THE OFFICIAL COMMITTEE OF DIRECT LENDERS OMNIBUS OPPOSITION TO DEBTORS': (1) EX PARTE APPLICATION FOR ORDER SHORTENING TIME TO HEAR MOTION FOR ORDER TO REMOVE FERTITTA ENTERPRISES, INC. AS MEMBER OF OFFICIAL COMMITTEE OF HOLDERS OF EXECUTORY CONTRACT RIGHTS; (2) EX PARTE APPLICATION FOR ORDER SHORTENING TIME TO HEAR DEBTORS' APPLICATION FOR ADMINISTRATIVE ORDER ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND REIMBURSEMENT OF PROFESSIONALS; (3) EX PARTE APPLICATION FOR**

**ORDER SHORTENING TIME TO HEAR MOTION FOR AUTHORITY TO FORBEAR AND TO PROVIDE FURTHER FUNDING FOR CERTAIN OUTSTANDING LOANS; (4) EX PARTE APPLICATION FOR ORDER SHORTENING TIME TO HEAR DEBTORS' MOTION FOR ORDER APPROVING AGREEMENT WITH INVESTMENT PARTNERS; AND (5) EX PARTE APPLICATION FOR ORDER SHORTENING TIME TO HEAR MOTION FOR EMERGENCY INTERIM AND PERMANANT ORDERS AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING**

The Official Committee of Holders of Executory Contract Rights through USA Commercial Mortgage Company (the "Official Committee of Direct Lenders"), by and through its counsel, the law firm of Gordon & Silver, Ltd. ("G&S"), hereby submits its Omnibus Opposition (the "Opposition") to Debtors': (1) Ex Parte Application ("Fertitta Application") For Order Shortening Time To Hear Motion For Order To Remove Fertitta Enterprises, Inc. As Member Of Official Committee Of Holders Of Executory Contract Rights (the "Fertitta Motion"); (2) Ex Parte Application ("Interim Compensation Application") For Order Shortening Time To Hear Debtors' Application For Administrative Order Establishing Procedures For Interim Compensation And Reimbursement Of Expenses Of Professionals (the "Interim Compensation Motion"); (3) Ex Parte Application ("Funding Application") For Order Shortening Time To Hear Motion For Authority To Forbear And To Provide Further Funding For Certain Outstanding Loans (the "Funding Motion"); (4) Ex Parte Application ("Investment Partners Application") For Order Shortening Time To Hear Debtors' Motion For Order Approving Agreement With Investment Partners (the "Investment Partners Motion"); and (5) Ex Parte Application ("DIP Application") For Order Shortening Time To Hear Debtors' Motion For Emergency Interim And Permanent Orders Authorizing The Debtors To Obtain Post-Petition Financing (The "DIP Motion" and collectively, the "Ex Parte Applications")

**LEGAL ANALYSIS AND ARGUMENT**

From early afternoon to close of business on Friday, June 9, 2006, the Debtors filed five (5) substantive motions, the outcome of which will have a considerable and enduring impact on

1 these proceedings. In each instance, the Debtors seek hearings on June 21, 2006, thereby  
 2 limiting due process without demonstrating reasonable justification. Given the Case  
 3 Management Order employed in this case, parties in interest including the Official Committee of  
 4 Direct Lenders would have only three (3) business days in which to fully analyze and respond to  
 5 Debtors' pleadings. Debtors' gamesmanship is transparent and unrefined; use the Case  
 6 Management Order as a sword to deny this Court and all parties in interest sufficient time to  
 7 scrutinize their requests for relief.  
 8

9 One common theme for all of the applications is that the Court will not be available from  
 10 after June 21, 2006, until the next scheduled hearing on July 25, 2006. As such, Debtors claim  
 11 that all of these motions must come on for hearing on June 21, 2006, because Debtors cannot  
 12 wait a month to have hearings held on the five (5) substantive motions. Without conceding that  
 13 these motions need to be heard prior to July 25, 2006, and pointing out that the Court's schedule  
 14 has been known for weeks, the obvious solution is to have these motions heard in the ordinary  
 15 course by a visiting judge or Judge Markell, provided these motions can be so accommodated.  
 16

17 Fed. R. Bankr. P. 9006(c)(1) permits a Bankruptcy Court, for cause shown and in its  
 18 discretion, to reduce the period during which any notice is given in accordance with the  
 19 Bankruptcy Rules. Bankruptcy Rule 9006(c)(1) provides as follows:  
 20

21 Except as provided in paragraph (2) of this subdivision, when an  
 22 act is required or allowed to be done at or within a specified time  
 23 by these rules or by a notice given thereunder or by order of court,  
 24 the court for cause shown may in its discretion with or without  
 25 motion or notice order the period reduced.

26 Local Rule 9006 provides further authority for shortening the time for a hearing. According to  
 27 Local Rule 9006(b), every motion for an order shortening time must be accompanied by a sworn  
 28 statement evidencing the need for an expedited hearing. Here, the basis for every Ex Parte  
 Application is insufficient.

1 Investment Partners Motion

2 Debtors' seek to hear the Investment Partners Motion on shortened time, however,  
3 Debtors' have failed to act timely in bringing the motion. On May 24, 2006, Debtors recorded  
4 UCC Financing Statement No. 2006016582-4 (the "Statement") with the Nevada Secretary of  
5 State securing assets from Investment Partners. The implication of the Statement is that the  
6 principals of Debtor USA Capital Mortgage Company have granted a security interest in  
7 numerous of their membership interests in partnerships in favor of another Debtor, USA First  
8 Trust Deed Fund, LLC. This raises serious issues regarding the ability of other Debtors,  
9 creditors and parties in interest to pursue causes of action against and guarantees executed by  
10 these same individuals which need to be explored, as well as the motivations of management of  
11 the Debtors to agree to such a transaction.  
12

13  
14 Upon the filing of the Statement, the Direct Lenders Committee requested information  
15 concerning the transaction and copies of the underlying security agreement. Like every other  
16 request made to date, Debtors refused to provide the Direct Lenders Committee any information  
17 concerning this transaction. Moreover, by their own account, this transaction has been  
18 concluded since May 31. See Investment Partners Motion p. 2, ¶ 7. As such, the "emergency"  
19 nature of the Investment Partners Motion was caused at worst by Debtors' intentional act to  
20 delay filing the Investment Partners Motion or at best by Debtors own failure to timely file their  
21 request for relief. As such, given the need for parties in interest to examine the transaction, and  
22 given the Debtors' failure to timely seek relief, the Investment Partners Motion should be  
23 brought in the ordinary course.  
24

25 The Fertitta Motion

26 By way of the Fertitta Motion, Debtors' seek to gerrymander the Direct Lenders  
27 Committee and silence its Chairman who has scrutinize the Debtors' actions with a critical eye.  
28

1 The Fertitta Motion will ultimately fail because it contains misleading and incorrect factual  
2 assertions, suggests bad faith on the part of the Debtors and is logically flawed. However, the  
3 Fertitta Application must be denied because its does not demonstrate "cause" and the Debtors  
4 have further failed to cooperate with the Direct Lenders Committee by providing documents  
5 reasonably necessary to timely file a response.  
6

7 First, Debtors attempt to demonstrate "cause" by claiming they anticipate negotiating a  
8 plan of reorganization sometime in July. Although there are twenty-six (26) members of the four  
9 (4) official committees, Debtors are concerned that Mr. Bullard's participation would "so greatly  
10 affect the negotiations" as to jeopardize the entire plan process. Obviously, the sum of the Direct  
11 Lenders Committee is more than it's Chairman and its other capable members will make sure its  
12 fiduciary duties are fulfilled. Moreover, in a telling sign, neither the Direct Lenders Committee  
13 itself nor the Office of the United States Trustee believe the Fertitta or Bullard have any conflict  
14 which impacts Mr. Bullard's ability to serve on the Direct Lenders Committee.  
15

16 Second, the Direct Lenders Committee has repeatedly requested of the Debtors certain  
17 documents which will affirmatively demonstrate that there is no conflict of interest. To date, the  
18 Direct Lenders Committee's requests for information (both written and oral) have gone  
19 unanswered. Ultimately, given the Debtors' lack of cooperation, it was necessary to issue a  
20 subpoena which is pending service (which Debtors' counsel is unsure whether they have the  
21 authority to accept) in order to obtain relevant and necessary information. As such, the Debtors  
22 can not properly seek an order shortening time and ask the Direct Lenders Committee to file a  
23 written response by Wednesday when Debtors are unwilling to provide information necessary to  
24 the Direct Lenders Committee's to timely file a response.  
25

#### 26 Funding Motion

27 By way of the Funding Motion, Debtors' seek broad authority to enter into loan  
28

1 modifications, forbearances, releases of collateral and additional funding on a variety of loans.  
2 There has been no showing by the Debtors as to why the relief must be obtained immediately.  
3 Moreover, to ask parties in interest to fully analyze all the referenced projects and prepare a  
4 response within three (3) business days is unwarranted under the circumstances.

5 Portions of the Funding Motion relate to loans which are non-performing and held by  
6 hundreds of direct lenders. The Debtor, USA Capital Mortgage Company, is seeking to use its  
7 authority under powers of attorney to forbear or restructure these loans or release collateral  
8 affecting hundreds of direct lenders. None of these direct lenders will even receive notice, let  
9 alone have time to analyze and respond, to these attempts to materially affect their loans and  
10 collateral by June 21, 2006, let alone June 14, 2006.

#### 11 Interim Compensation Motion

12 By way of the Interim Compensation Motion, Debtors seek a procedure by which  
13 professionals can be paid on a monthly basis. The Interim Compensation Motion should be  
14 heard in the ordinary course because it is simply not the type of matter that needs to be approved  
15 on shortened time.

#### 16 DIP Motion

17 Without having filed its Statements and Schedules, and without having completed the  
18 long awaited accounting, Debtors again turn their attention to an "emergency" DIP loan. As  
19 with their ill-fated last attempt at a DIP loan, Debtors have yet to demonstrate that a DIP is  
20 necessary, let alone on an emergency basis. As with the other Ex Parte Applications, the DIP  
21 Motion should be heard in the ordinary course so that the Direct Lenders Committee can  
22 investigate whether such relief warranted under the circumstances.

23 Again, how can the parties in interest properly respond to the DIP Motion on such a  
24 shortened time?


### 25 **CONCLUSION**

26 WHEREFORE, the Official Direct Lender Committee respectfully requests that the Court deny  
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28

1 the Ex Parte Applications and for such other relief that is just and proper.

2  
3 DATED this 2<sup>nd</sup> day of June, 2006.

GORDON & SILVER, LTD.

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5 By   
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10 of Holders of Executory Contract Rights  
11 Through USA Commercial Mortgage Company  
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